

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202004872	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/03/2020 12:30 AM, Friday, 07/03/2020 3:00 PM	Location of Incident: § 87(2)(b)	Precinct: 79	18 Mo. SOL 1/3/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 07/07/2020 5:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/07/2020 5:22 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Mohamed Elhanafi	15082	955897	079 PCT
2. LT James Hart	00000	947065	079 PCT
3. POM Patrick Foley	18425	958596	INT CIS
4. SGT Frederick Manney	04797	949938	090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Orlando Adorno	20407	962200	079 PCT
2. POM Charles Rivera	03221	956202	079 PCT
3. POM Marco Countryman	08408	966006	079 PCT
4. POF Edjona Rexha	12813	966301	079 PCT
5. POM Travis Brinson	05198	939940	079 PCT
6. POM Jon Cardenas	30282	966980	079 PCT
7. POF Margaret Lopez	15727	951940	079 PCT
8. POM Ismael Claudio	23427	967003	079 PCT
9. POF Leticia Dumasgalindo	02316	964498	079 PCT
10. POF Nicola Whittick	05857	957285	079 PCT
11. POM Mark Angervil	25456	966943	079 PCT
12. POM Larry Malcolm	14374	953039	079 PCT
13. POM Christophe Wittek	25450	967396	079 PCT
14. POM Jarrett Nadal	19273	958970	079 PCT
15. POM Leo Bonacasa	12994	955762	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.LT James Hart	Abuse: On July 3rd, 2020, at 12:30 a.m, Lieutenant James Hart entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.SGT Frederick Manney	Abuse: On July 3rd, 2020, at 12:30 a.m, Sergeant Frederick Manney searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
C.POM Mohamed Elhanafi	Abuse: .On July 3rd, at 12:30 a.m, Police Officer Mohamed Elhanafi searched § 87(2)(b) in Brooklyn.	
D.POM Patrick Foley	Abuse: On July 3rd, at 12:30 a.m, Police Officer Patrick Foley searched § 87(2)(b) in Brooklyn.	
E.SGT Frederick Manney	Abuse: On July 3rd, 2020 at 3 p.m., Sergeant Frederick Manney entered § 87(2)(b) in Brooklyn	
F.SGT Frederick Manney	Abuse: On July 3rd, 2020 at 3 p.m., Sergeant Frederick Manney searched § 87(2)(b) in Brooklyn	

Case Summary

On July 7th, 2020, the CCRB received the following website complaint from § 87(2)(b) [BR 1].

At about 12:30 a.m., two men were shot just outside of § 87(2)(b) in Brooklyn. Lieutenant James Hart, Sergeant Frederick Manney, Police Officer Mohamed Elhanafi, Police Officer Patrick Foley, and multiple other members of service assigned to the 79th Precinct responded. Officers encountered one of the victims on the sidewalk outside of § 87(2)(b). Multiple civilians attending a party inside of § 87(2)(b) informed officers that the second victim was inside § 87(2)(b). Lt. Hart and multiple other officers entered this apartment [Allegation A: Abuse of Authority – Entry of Premises, § 87(2)(g)]. Sgt. Manney, PO Elhanafi, and PO Foley then conducted a search of the apartment, the scope of which is in dispute [Allegation B: Abuse of Authority – Search of Premises, § 87(2)(g); Allegation C: Abuse of Authority – Search of Premises, § 87(2)(g)]. A firearm was recovered during the search, and PO Elhanafi subsequently placed one of the partygoers, § 87(2)(b) under arrest for § 87(2)(b) § 87(2)(a) 160.50. The arrest has been sealed.

At around 3 p.m. on the same date, Sgt. Manney, along with multiple officers, entered and searched § 87(2)(b) again [Allegation E: Abuse of Authority – Entry of Premises, § 87(2)(g); Allegation F: Abuse of Authority – Search of Premises, § 87(2)(g)]. Another firearm was recovered during this search, and Officer Elhanafi subsequently arrested § 87(2)(b) an inhabitant of the apartment, for § 87(2)(b), § 87(2)(a) 160.50. The arrest has been sealed.

Across three separate requests, the CCRB received 30 body-worn camera videos for this case [BR 2, BR 3, BR 4].

Allegation A: Abuse of Authority - On July 3rd, 2020, at 12:30 a.m., Lieutenant James Hart entered § 87(2)(b) inside of § 87(2)(b)

Allegation B: Abuse of Authority - On July 3rd, 2020 at 12:30 a.m., Sergeant Frederick Manney searched § 87(2)(b) inside of § 87(2)(b)

Allegation C: Abuse of Authority - On July 3rd, 2020, at 12:30 a.m., Police Officer Mohamed Elhanafi searched § 87(2)(b) inside of § 87(2)(b)

Allegation D: Abuse of Authority - On July 3rd, 2020, at 12:30 a.m., Police Officer Patrick Foley searched § 87(2)(b) inside of § 87(2)(b)

Late in the evening on July 2nd, 2020, the inhabitants of § 87(2)(b) inside of § 87(2)(b) in Brooklyn hosted a party. (Note that in this use and hereafter, “inhabitant” is to be taken matter-of-factly, i.e. neutrally with regard to tenancy or other legal status.) At about 12 a.m., two of the partygoers were shot just outside of § 87(2)(b) as noted in an Unusual Occurrence Report [BR 5]. After being shot, one of the victims ran inside of § 87(2)(b) where he collapsed. During his CCRB interview [BR 6], Lt. Hart identified himself as the commanding officer on scene. He stated that, upon his arrival, many people began walking out of § 87(2)(b). Some of these individuals informed Lt. Hart that one of the shooting victims was inside of § 87(2)(b). A trail of blood led into the lobby of § 87(2)(b) according to Lt. Hart, and then into § 87(2)(b) the door of which was wide open. Lt. Hart directed officers to enter the apartment to render aid to the victim. The first two minutes of Lt. Hart and PO Claudio’s body-worn camera videos corroborate Lt. Hart’s testimony [BR 7 and 8].

It is settled that, soon after, Sgt. Manney, along with PO Foley and PO Elhanafi, conducted a sweep or search of the apartment. The scope of the search is in dispute. § 87(2)(b) stated during his CCRB interview [BR 9] that, as he stood on the sidewalk, he was able to see, through his

apartment windows, officers searching various rooms including closets and drawers inside of the rooms. Sgt. Manney denied during his CCRB interview [BR 10] that he or any other officers conducted a full-blown search of the apartment. Sgt. Manney stated that he conducted a “protective sweep” of the apartment along with PO Foley and PO Elhanafi. Sgt. Manney denied that he was looking for contraband or evidence of criminal activity during this sweep. PO Elhanafi’s testimony is consistent [BR 11]. Sgt. Manney and PO Elhanafi both stated that they looked only in areas where a person could be hiding – including closets -- to determine whether there were any shooters or shooting victims on the premises. Sgt. Manney explained that multiple rounds were observed at the scene of the shooting, indicating that more than two persons could have been shot. Lt. Hart also noted that a trail of blood led from the front of the apartment to a back bedroom, which further indicated the possible presence of additional victims. This trail of blood is captured briefly at 02:52 in a body-worn camera video recorded by PO Foley [BR 12].

Sgt. Manney and PO Elhanafi both stated that, during the protective sweep, PO Foley located a firearm inside one of the bedrooms. PO Foley was alone when he found the firearm, according to Sgt. Manney. However, PO Elhanafi stated that, to his understanding, Sgt. Manney and PO Foley located the firearm together. PO Foley resigned from the department on December 11th, 2020, and was not interviewed for this case. PO Elhanafi and Sgt. Manney both acknowledged observing the firearm at some point, and provided consistent descriptions of its whereabouts: inside of the partly- opened drawer of a cabinet, that was itself inside of a closet in one of the back bedrooms. PO Elhanafi stated that, to his understanding, the drawer was already open when PO Foley entered the bedroom, and that PO Foley observed part of the firearm in plain view. There is no body-worn camera footage of the protective sweep conducted by Sgt. Manney, PO Foley, and PO Elhanafi. However, PO Foley made a BWC recording [BR 12] while conducting a second sweep of the apartment, some time after he located the firearm; this recording at 03:25 captures the cabinet – the drawers of which are partly open – where the firearm was located.

Sgt. Manney stated that he had the apartment frozen after the firearm was located, so that no evidence would be disturbed, while Field Intelligence Officers assigned to the 79th Precinct applied for a search warrant. PO Elhanafi then arrested § 87(2)(b) for § 87(2)(b), § 87(2)(a) 160.50. The arrest is captured at 01:00 in BWC footage recorded by PO Elhanafi [BR 13]. This video’s internal clock shows that the arrest occurred at 12:53 a.m., about 20 minutes after officers first responded. PO Elhanafi and Sgt. Manney were consistent that § 87(2)(b) was charged with the firearm because he had been inside of the apartment when officers first entered. In a letter to the CCRB [BR 14], the Kings County District Attorney Early Case Assessment Bureau stated that the District Attorney’s office declined to prosecute § 87(2)(b). The CCRB was unable to obtain an unsealing order from § 87(2)(b) which is required to obtain notice of the DA’s rationale for declining to prosecute.

In *People v. Rivera*, the facts were as follows. Officers responded to a radio transmission that a male had been shot in a particular apartment. Two civilians on scene pointed the officers to the apartment where the shooting occurred. The officers then entered the apartment. The court ruled that the contents of the radio run, the report of shots fired from occupants of the building, and the screams and sounds emanating from the apartment provided a sufficient predicate for entry into the apartment. The court held generally that a warrantless entry into a defendant’s home is proper when there are reasonable grounds to believe that an emergency situation exists requiring an immediate need for assistance for the protection of the life, and there is a reasonable basis approximating probable cause to associate the emergency with the area to be searched. *People v. Rivera* 171 A.D.2d 560 [BR 15]

In *People v. Robinson*, the facts of the case were as follows. Officers responded to an apartment where there had been a dispute, possibly involving firearms. Officers entered and conducted a sweep of the apartment. The court ruled that the officers were justified in entering the apartment under the emergency doctrine, and acted reasonably in conducting a protective sweep of the apartment for victims or armed persons therein. *People v. Robinson* 225 A.D.2d 399 [BR 16].

In *People v. Green*, the court defined a protective sweep (or “security check”) as a very quick and limited pass through the premises to check for third persons who may destroy evidence or pose a threat to officers. Once the security check has been completed and the premises secured, no further search – be it extended or limited – is permitted until a warrant is obtained. *People v. Green*, 103 A.D.2d 362 [BR 17].

§ 87(2)(g)

Officers first responded to the incident at around 12:33. At 12:53 a.m., § 87(2)(b) was arrested for the firearm that PO Foley located. § 87(2)(g)

Allegation E: On July 3rd, 2020, at 3:00 p.m., Sergeant Frederick Manney entered § 87(2)(b)

inside of § 87(2)(b) Brooklyn.

Allegation F: On July 3rd, 2020, at 3:00 p.m., Sergeant Frederick Manney searched § 87(2)(b)

inside of § 87(2)(b) Brooklyn.

The 79th Precinct Field Intelligence Officers’ request for a search warrant was denied. Sgt. Manney learned this sometime in the late morning of July 3rd, 2020. At around 1 p.m., Sgt. Manney, PO Elhanafi, and the FIOs met in person with the landlord of § 87(2)(b) § 87(2)(b). This is captured in body-worn camera recorded by Sgt. Manney [BR 18].

§ 87(2)(b) informed Sgt. Manney and the other members of service that § 87(2)(b) was supposed to be vacant. This is undisputed across officers’ statements, § 87(2)(b) s statement, as well as § 87(2)(b) statement to the CCRB [BR 19]. It is further undisputed that § 87(2)(b) and the other inhabitants of § 87(2)(b) § 87(2)(b) originally entered the apartment without permission from the landlord or custodian of the property. None of the inhabitants entered a lease or other contract with any custodian of the property. Moreover, § 87(2)(b) § 87(2)(b) called the police to report trespassing in the apartment on multiple occasions, and took measures -- including installing a “vacant apartment” door, and affixing various anti-trespassing devices to the apartments’ windows – to prevent entry to the apartment. Additionally, § 87(2)(b) acknowledged during his CCRB interview that § 87(2)(b) had been attempting to eject him and the other inhabitants from the apartment since they first illegally moved in.

After informing Sgt. Manney that the inhabitants of § 87(2)(b) were trespassers, § 87(2)(b) § 87(2)(b) signed a consent-to-search form, allowing officers to search the apartment. This is captured at 5:00 in Sgt. Manney’s body-worn camera footage [BR 18]. At about 3 p.m. on July 3rd, Sgt. Manney – along with PO Elhanafi, PO Foley, and Police Officer Daniel Manetta – entered and conducted a full-blown search of the apartment. This is captured in BWC videos recorded by Sgt. Manney and PO Elhanafi [BR 20 and 21]. During the search, PO Manetta recovered another firearm. § 87(2)(b) walked by the apartment as the officers were finishing their search. When

§ 87(2)(b) told Sgt. Manney that he was living inside of the apartment, PO Elhanafi placed him under arrest for § 87(2)(b), § 87(2)(a) 160.50. § 87(2)(b)'s arrest report is sealed [BR 22]. The Kings County District Attorney Early Case Assessment Bureau stated in a letter to the CCRB [BR 23] that the DA's office had decline to prosecute § 87(2)(b). The CCRB was unable to obtain an unsealing order from § 87(2)(b) which is required to obtain notice of the DA's rationale for declining to prosecute.

In *People v. Stanley*, the facts of the case were as follows. A squatter had moved into an apartment, without signing a lease or paying the landlord rent. In addition, the landlord had commenced a summary proceeding to have the squatter evicted from the apartment. The court ruled that the defendant had no legal right to control or possess the apartment, and therefore did not have a reasonable expectation of privacy in the apartment. *People v. Stanley A.D.3D 1066* [BR 24].

In *Walls v. Giuliani*, the court first held that New York Law confers no property interests upon squatters; however, if the owner or custodian of the property in question has demonstrably acquiesced to or tolerated the squatter's wrongful possession, the squatter may assume a naked possessory interest known as "tenancy at sufferance." The court went on to hold that reasonable expectations of privacy are defined either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society. Under this analysis, a trespasser obviously cannot claim any reasonable expectation of privacy in premises he is unlawfully occupying. To show that a defendant is a tenant, as opposed to a trespasser, he must prove that the landlord or custodian of the property has acquiesced to or tolerated his possession of the property. *Walls v. Giuliani 916 F. Supp. 214* [BR 25].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 26].
- Sgt. Manney has been a member of service for nine years, over which time he has been the subject of 10 other CCRB complaints and 25 allegations, none of which have been substantiated. § 87(2)(g)
 - § 87(2)(g) 202002487, 202002726, and 202007603 are all still under investigation to date.
- PO Elhanafi has been a member of service for 7 years, over which time he has been the subject of 12 other CCRB complaints and 42 allegations, none of which have been substantiated. § 87(2)(g)
 - § 87(2)(g) 202002726, § 87(2)(g) 202003707, § 87(2)(g) and 202007603 are all still under investigation to date.
- PO Foley was a member of service for seven years, over which time he was the subject of 6 complaints and 17 allegations, none of which were substantiated. PO Foley resigned from the department on December 11th, 2020, according to the NYPD Department Advocate's Office [BR 27].

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- The investigator was unable to access the Office of Court Administration database at the time of writing. § 87(2)(b) s OCA history will be added to the case file at a later date.
- On April 19th, 2021, the NYC Comptroller's Office confirmed that there are no notices of claim in regards to this incident [**BR 28**].

Squad No.: 7

Investigator: Will Rasenberger Inv. Will Rasenberger 04/13/21
Signature Print Title & Name Date

Squad Leader: Manager Vanessa Rosen April 19, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date